

## Insights

### Tele-prescribing Here to Stay? HHS Signals Commitment to COVID-19 Era Telemedicine Prescribing Expansions

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By: Madison Hartman Harada

After months of back and forth, with the fate of tele-prescribing in limbo, the Department of Health and Human Services (“HHS”) signaled its continued commitment to some COVID-19 era telemedicine expansions by the recent issuance of two final rules: (1) Expansion of Buprenorphine Treatment via Telemedicine Encounter, and (2) Continuity of Care via Telemedicine for Veterans Affairs Patients. Both rules took effect on February 18, 2025. In addition to these rules, the DEA has issued a third temporary extension extending the current telemedicine flexibilities for prescribing controlled substances to December 31, 2025.

The two Final Rules are as follows:

#### **Expansion of Buprenorphine Treatment via Telemedicine Encounter:**

- Impacted regulations: 21 CFR Part 1306 and 42 CFR Part 12.
- Allows a practitioner to prescribe schedule III-V controlled substances approved for the treatment of opioid use disorder (“OUD”) via a telemedicine (includes audio-only) encounter.
- If the encounter is audio-only, then the practitioner is permitted to prescribe only an initial six (6) month supply of the medication(s). Prescribing a quantity beyond the six-month supply may occur after a medical evaluation is conducted in-person or via another form of telemedicine permitted by the Controlled Substances Act.
- Prior to prescribing, the practitioner is required to review the last twelve (12) months of prescription drug monitoring program (“PDMP”) data of the state in which the patient is located at the time of the telemedicine encounter. The practitioner must record the date and time the review took place in the patient’s electronic health record. If the practitioner cannot access a PDMP, the prescription must only be seven days.
- Prior to dispensing, a pharmacist is required to verify the identity of the patient via a state or federal government-issued photo ID card; however, SAMHSA also clarified that individuals that are members of a household of the patient can also pick up the prescription if they have acceptable identification. The pharmacist’s responsibility to verify identification is in line with the corresponding responsibility of pharmacists that fill prescriptions for controlled substances.
- The practitioner must hold a DEA CSR in the state in which they are located **and** the state in which the patient is located.

- More information about prescribing buprenorphine via telemedicine can also be found on SAMHSA's Questions and Answers.

### **Continuity of Care via Telemedicine for Veterans Affairs Patients:**

- Impacted regulations: 21 CFR Part 1306 and 42 CFR Parts 12.
- Authorizes Department of Veterans Affairs ("VA") practitioners to prescribe controlled substances via telemedicine to VA patients.
- The VA patient must have previously received, at **any** time and by **any** practitioner (it need not be the prescribing practitioner), an in-person medical evaluation.
- Prior to prescribing, the practitioner must review the patient's electronic health record and the last twelve (12) months of PDMP data for the state in which the patient is located at the time of the telemedicine encounter. The practitioner must note the date and time of the review of the EHR and the PDMP in the patient's electronic medical record.
- If a review of either the PDMP data or the patient's electronic health record is not possible, then the practitioner is permitted to prescribe only a seven (7)-day supply of the medication(s). The practitioner can prescribe a quantity beyond seven (7) days once a review of both is completed.
- The practitioner must be employed or contracted with the VA and be acting within the scope of their employment. The practitioner cannot be a contractor located outside a VA facility or clinic and providing care via the community care network or conducting disability compensation evaluations.
- The practitioner must be registered with the DEA in **any** state or can use the DEA registration of a VA-operated hospital or clinic.

These two final rules signal an intent towards continuing the tele-prescribing flexibilities of the COVID-19 era today. This action is further confirmation that tele-prescribing is here to stay.

If you or your entity has a question regarding how these federal rules will impact your practice, please reach out to Stephanie Eckerle and Madison Hartman Harada.

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